

**REMARKS**

Claims 1, 3-10, and 12-30 are all the claims pending in the application. Claims 2 and 11 are cancelled herein without prejudice or disclaimer. Claims 1, 3-9, 12, 15-23, and 27-30 are amended herein. Moreover, no new matter is being presented. Claims 5-9, 11-13, 16 and 20-24 stand objected to only as being dependent upon a rejected base claim, and would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims. Claim 18 stands objected to upon informalities. Claims 1-4, 10, 14-15, 17-19, and 25-30 stand rejected on prior art grounds. The Applicant respectfully traverses these objections/rejections based on the following discussion.

**I. The Objections to the Claims**

Claim 18 stands objected to for being dependent on claim 16 rather than on claim 17. As such, the Applicant has amended claim 18 to be dependent on claim 17 in accordance with the suggestion in the Office Action. Therefore, the Applicants respectfully requests that the Examiner reconsider and withdraw this objection.

**II. The Prior Art Rejections**

Claims 1-4, 14-15, 17-19 and 25-28 stand rejected under 35 U.S.C. §102(e) as being anticipated by Rochberger, et al. (U.S. Patent No. 6,760,309), hereinafter referred to as "Rochberger". Claim 10 stands rejected under 35 U.S.C. §102(e) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Rochberger. Claims 29-30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rochberger. The Applicant

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respectfully traverses these rejections based on the following discussion.

Rochberger discloses an apparatus for and a method of dynamically prioritizing packets over a packet based network. Packets are dynamically prioritized on the basis of their 'time to live' in the network as they travel from one network entity to another. Packets are assigned a priority in accordance with how 'old' or 'young' they are. Packets with a relatively long time left to live are assigned lower priority than those with relatively little time left to live. A time to live (TTL) field is added to the packet as it travels from one network entity to another. The contents of the time to live (TTL) field represents how 'young' or 'old' the packet is and conveys the time left before the packet is no longer of any use. Each network entity that receives the packet with a TTL field, subtracts from it the time the packet spends passing through that entity. The field decreases as it hops from network entity to entity until it reaches its destination or is discarded.

However, amended independent claims 1, 17, and 27-30 incorporate elements not taught or suggested in Rochberger. In particular, independent claim 1 incorporates the features originally provided in dependent claims 2 and 11, which are now cancelled without prejudice or disclaimer. In fact, Rochberger does not teach or render obvious "calculating one or more statistical measures associated with values of said metric for the received packets, wherein the statistical measures include an average value," as provided in amended independent claim 1. Moreover, page 6, paragraph 8 of the Office Action indicates that the elements of original claim 11 contain allowable subject matter, thus by incorporating those elements into the intervening base claims (namely claim 2 and claim 1), amended independent claim 1 is therefore patentable over Rochberger.

Furthermore, independent claims 17 and 27-30 incorporate the elements taught in

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dependent claim 20, which the Office Action indicates contains allowable subject matter. In fact, Rochberger does not teach or render obvious "dynamically allocating a packet drop probability for one or more of the packets, based on the results of the assigned relative service priority," as generally provided in independent claims 17 and 27-30. Thus, independent claims 17 and 27-30 are patentable over Rochberger.

In view of the foregoing, the Applicant respectfully submits that the cited prior art reference, namely Rochberger, does not teach or suggest the features defined by amended independent claims 1, 17, and 27-30 and as such, claims 1, 17, and 27-30 are patentable over Rochberger. Further, dependent claims 3-10, 12-16, and 18-26 are similarly patentable over Rochberger, not only by virtue of their dependency from patentable independent claims, respectively, but also by virtue of the additional features of the invention they define. Thus, the Applicant respectfully requests that these rejections be reconsidered and withdrawn.

Moreover, the Applicant notes that all claims are properly supported in the specification and accompanying drawings, and no new matter is being added. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections.

## **II. Formal Matters and Conclusion**

With respect to the objections to the claims, the claims have been amended, above, to overcome these objections. Moreover, the claims have been amended to more particular and clearly claim the subject matter of the invention. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the objections and rejections to the claims.

In view of the foregoing, Applicant submits that claims 1, 3-10, and 12-30, all the claims

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presently pending in the application, are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary.

Please charge any deficiencies and credit any overpayments to Attorney's Deposit  
Account Number 09-0441.

Respectfully submitted,

Dated: March 1, 2005



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